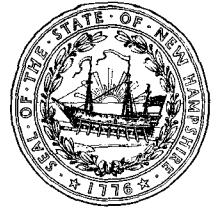




The State of New Hampshire
Department of Environmental Services

Michael P. Nolin
Commissioner



Ralph and Gail Tucci
1253 Upper City Road
Pittsfield, New Hampshire 03263

Re: Violations of RSA 485-A:17 and RSA 482-A
Map R17 Lot 2, Pittsfield, New Hampshire

ADMINISTRATIVE ORDER
No. WD 05-031

November 21, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Ralph and Gail Tucci, pursuant to RSA 485-A:22 and RSA 482-A:6. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal offices at 29 Hazen Drive, Concord, NH.
2. Ralph and Gail Tucci, hereinafter referred to as the "Tuccis," are individuals having a mailing address of 1253 Upper City Road, Pittsfield, New Hampshire 03263.

C. STATEMENT OF FACTS AND LAW

1. Pursuant to RSA 485-A:17, DES regulates significant alteration of terrain and erosion control through a permit program. Pursuant to RSA 485-A:6, VIII, DES has adopted NH Administrative Rules Env-Ws 415 to implement this program.
2. Env-Ws 415.02(y) defines significantly altering the characteristics of the terrain to include disturbing more than 100,000 square feet of contiguous area.
3. RSA 485-A:17 requires any person who proposes to significantly alter the terrain to obtain a permit from DES prior to initiating the work.
4. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

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DES Web site: www.des.nh.gov

RSA 482-A:11, I the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.

5. RSA 482-A:3, I states that "[no] person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."

6. RSA 482-A:14, III provides that "[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".

7. Env-Ws 415.09(i) and (k) require employment of temporary and permanent methods for preventing soil erosion and controlling runoff.

8. Env-Ws 415.09(j) requires construction phasing and sequencing, including methods for limiting the length of time of exposure of unstabilized soils.

9. The Tuccis are the owners of property located in Pittsfield, NH, more particularly identified on Town of Pittsfield Tax Maps as Map R17 Lot 2 ("the Property").

10. On October 20, 2005, DES personnel met with Mr. Tucci on the Property in response to a complaint from the Pittsfield Conservation Commission. Mr. Tucci was present during DES's inspection of the Property. During the inspection the following was observed:

- a) Alteration of terrain in excess of 100,000 square feet had taken place on the Property, including approximately 15 feet of fill placed up to the edge of the perennial stream;
- b) No temporary erosion control measures had been installed on the Property;
- c) Areas of unstabilized soils on the Property were eroding, and rutting was evident;
- d) At least 3 culverts had been installed in a perennial stream on the Property that did not appear to be adequately sized to convey stream flows without overtopping of the crossings; and
- e) No headwalls had been constructed at the culverts and erosion of unstable slopes into the perennial stream was evident.

11. At the time of the inspection, Mr. Tucci was requested to install erosion control measures to prevent further impacts to surface waters.

12. DES records do not show any application for, or issuance of, any permits to the Tuccis for any activities regulated under RSA 485-A or RSA 482-A.

13. Research by DES personnel, including review of National Wetland Inventory maps and USGS topographic information, revealed that there are perennial streams and numerous wetland areas on the Property.

14. DES personnel scheduled another site visit to the Property with the Tuccis and suggested

that the Tuccis retain the services of a Certified Wetland Scientist ("CWS").

15. On November 1, 2005, DES personnel inspected the Property with Mr. Tucci and Peter Schauer, CWS. During the inspection the following was observed:

- a) Silt fence had been installed at the edge of the perennial stream and at edge of the fill area before the slope. No other erosion control measures were in place at the time of the inspection;
- b) Two perennial streams on the Property had been impacted by the unpermitted alteration of terrain that had taken place on the Property. Rip rap, slash, stumps, and fill had been placed in the streams and on the banks of the streams. This material had eroded into the streams. A minimum of 600 linear feet of stream had been impacted;
- c) A total of five culverts had been installed in the streams without a permit from DES. All culverts were undersized and in some places the stream was flowing over the newly constructed road carrying sediment into the streams;
- d) Wetlands on three properties downstream of Tuccis had been impacted by activities on the Property. A minimum of 30,000 square feet of wetland impact has occurred;
- e) A farm pond on a downstream property had been partially filled with sediment from the Tucci property, and the water was turbid;
- f) Edge of wetlands adjacent to the perennial streams could not be discerned due to the large amount of fill (area and depth). In some places, the fill was 15-18 feet deep;
- g) Large deposits of sediment were found in jurisdictional wetlands as a result of unstable material (fill) that had eroded into the perennial streams. The depth of fill ranged from 2 inches to 20 inches. A minimum of 58,000 square feet of wetland impact has occurred;
- h) Hydrology on the Property had been altered as evidenced by numerous rivulets observed throughout the excavated and filled areas;
- i) Woods roads throughout the property showed recent evidence of machinery traveling through streams, wetlands, seasonal runoffs;
- j) The area of disturbance was mapped using Global Positioning System ("GPS") equipment. The total area of disturbance measures approximately 15 acres. Photos were taken.

D. DETERMINATION OF VIOLATIONS

1. The Tuccis have violated RSA 485-A:17 by failing to obtain a permit from DES prior to initiating alteration of terrain activities on the Property.
2. The Tuccis have violated RSA 485-A:17 and Env Ws 415.09(i) by failing to install adequate erosion control measures on the Property.
3. The Tuccis have violated RSA 485-A:17 and Env-Ws 415.09(j) by failing to stabilize disturbed areas within the Property.

4. The Tuccis have violated RSA 482-A:3, I by filling, dredging, or altering a minimum of 88,000 square feet of wetlands in multiple areas throughout the property without obtaining a permit from DES.
5. The Tuccis have violated RSA 482-A:3, I by filling, dredging, or altering a minimum of 80 linear feet of a perennial stream and its associated wetlands to install two culverts without obtaining a permit from DES.
6. The Tuccis have violated RSA 482-A:3, I by filling, dredging, or altering a minimum of 120 linear feet of a second perennial stream and its associated wetlands to install three culverts without obtaining a permit from DES.
7. The Tuccis have violated RSA 482-A:3, I by filling, dredging, or altering a minimum of 400 linear feet of perennial streams and their associated wetlands with fill, slash, stumps, rip rap, etc. without obtaining a permit from DES.
8. The Tuccis have violated RSA 482-A:3, I by impacting multiple seasonal streams without obtaining a permit from DES.
9. The Tuccis have violated RSA 482-A:3, I by impacting a pond, a stream, and associated wetlands down slope on abutting properties without obtaining a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders the Tuccis as follows:

- 1. Immediately cease and desist** all activities on the Property, except as necessary to stabilize the Property pursuant to this Order. Where sediment deposition has occurred on abutting properties, obtain written permission from the abutters to enter, stabilize where necessary, and delineate wetlands.
- 2. Within 10 days of this Order**, submit a temporary stabilization plan ("Stabilization Plan") for the Property to DES for approval. The Stabilization Plan shall be prepared by a Professional Engineer or a Certified Professional in Erosion and Sediment Control, shall include a schedule for implementing the measures described in the Stabilization Plan, and shall, at a minimum, call for the following measures to be implemented within 15 days of the date of this Order:
 - a) Install temporary and permanent erosion control measures necessary to stabilize the site and prevent further impacts to surface waters;
 - b) Regrade slopes adjacent to wetlands and surface waters so that they are no steeper than 3:1;
 - c) Install erosion control matting on all unstabilized or unvegetated slopes; and
 - d) Place non-erodible granular backfill on all unpaved road or other travel surfaces.
- 3. Within 15 days of the date of this Order**, implement the measures specified in E.2.a through d.

4. Within 15 days of the date of DES approval of the Stabilization Plan, implement the remaining measures in the approved Stabilization Plan on the Property according to the schedule detailed in the Stabilization Plan.

5. Within 30 days of the date of this Order, submit to DES for approval a restoration plan for all wetlands, streams, and ponds located on the Property and abutters' properties. The restoration plan shall be prepared by a certified wetland scientist and stamped by a licensed surveyor, and include the following:

- a) Existing conditions and land topography, with dimensions drawn to scale, including the delineated footprint of all wetlands, streams, ponds, and jurisdictional runoffs on the Property as well as relevant wetland areas on abutting properties prior to disturbance. Prepare delineation in accordance with Section F of the Army Corps of Engineers Wetlands Delineation Manual ("Section F");
- b) The delineated footprint of all disturbed areas in accordance with Section F;
- c) The area, in square feet, of disturbance on the Property and on abutting properties;
- d) A plan for reestablishing the wetland to its original footprint along with proposed conditions after reestablishing the jurisdictional areas;
- e) A plan for restoring all impacted areas of the perennial and seasonal streams and surface waters;
- f) A detailed proposed means of sediment and erosion control (silt fences, haybales, matings, etc.);
- g) A proposed schedule, restoration, and construction sequence listing equipment and methods for accomplishing restoration as well as an anticipated restoration compliance date;
- h) A detailed proposed planting plan for the reestablishment, stabilization, and revegetation of the restoration areas;
- i) A monitoring and reporting schedule including an initial report to DES and once the restoration plan is completed at least one restoration progress assessment report every year for the first two full growing seasons documenting at least 75% survival of all vegetation planted during the restoration project.

6. Retain a certified wetland scientist to supervise the implementation of the restoration plan prepared in accordance with Item E.4 above and to submit the restoration progress reports.

7. Implement the restoration plan proposed in accordance with Item E.4 above only after receiving written approval, and as conditioned, by DES.

8. Within 30 days of the date of this Order, submit to DES an application for a Site Specific permit for the Property. The application shall be prepared by an engineer licensed in the State of New Hampshire, in accordance with Env-Ws 415.05.

9. Submit the temporary stabilization plan, the restoration plan, the Site Specific permit application and the names of professionals retained, to:

Ana Herrero, Compliance Specialist
DES Water Division

29 Hazen Drive - P.O. Box 95
Concord, NH 03302-0095

F. APPEAL

Any person aggrieved by determinations D.1 through D.3 of this Order may appeal to the New Hampshire Water Council by filing an appeal that meets the requirements specified in Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

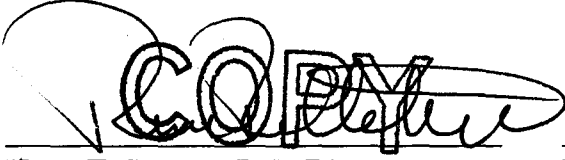
Any person aggrieved by determinations D.4 through D.9 of this Order may request DES to reconsider those determinations within 20 days of the date of the Order. The request for reconsideration must comply with Wt 203.01(d) (copy attached), and will be processed in accordance with Wt 203.01(e)-(j). Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.


Filing an appeal or request for reconsideration of the Order will not automatically relieve the Tuccis of their obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 485-A:22 and RSA 482-A:13 and 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. The Tuccis remain obligated to comply with all applicable requirements. DES will continue to monitor the Tuccis compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Merrimack County Registry of Deeds so as to run with the land.


for Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

CERTIFIED MAIL # 7004 0750 0003 0561 8057

cc: Gretchen R. Hamel, Legal Unit Administrator
James P. Martin, Public Information Officer, DES
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB

Merrimack County Registry of Deeds

Ridgely Mauck, Program Supervisor, DES Alteration of Terrain

Ana Herrero, Compliance Specialist, DES Alteration of Terrain

Tracey Boisvert, Compliance Supervisor, DES Wetlands

Eric Skoglund, Compliance Specialist, DES Wetlands

Pittsfield Planning Board

Pittsfield Conservation Commission